

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

MAURICE MCKAY

05-CV-8936 (KMK) (JCF)

Plaintiff,

-against-

AMENDED ANSWER

THE CITY OF NEW YORK, TRIBOROUGH
BRIDGE AND TUNNEL AUTHORITY ("TBTA")
TBTA POLICE OFFICER MICHAEL CHIAIA,
Shield #2507 POLICE OFFICERS JOHN
DOES #1-4

Defendants.

-----X

Defendants, TRIBOROUGH BRIDGE AND TUNNEL AUTHORITY sued
herein, as "TRIBOROUGH BRIDGE AUTHORITY" (Hereinafter "TBTA") and
MICHAEL CHIAIAas and for their Amended Answer to the Complaint of the plaintiff
herein:

I. PRELIMINARY STATEMENT

1. Deny, upon information and belief, the allegations contained in paragraph
number "1" of the Complaint.

II. JURISDICTION

2. Deny, upon information and belief, the allegations contained in paragraph
number "2" except admit that plaintiff purports to bring this action, seek relief, and
invoke the jurisdiction of the court as stated therein.

III. THE PARTIES

3. Deny that they have any knowledge or information thereof sufficient to form belief as to allegation contained in the paragraph number "3" of the Complaint.

4. Deny that they have any knowledge or information thereof sufficient to form belief as to allegation contained in the paragraph number "4" of the Complaint.

5. Deny, upon information and belief, the allegations contained in paragraph number "5" on the Complaint, except admit that MICHAEL CHIAIA was employed by the TRIBOROUGH BRIDGE AND TUNNEL AUTHORITY and that the plaintiff purports to sue MICHAEL CHIAIA in his individual and official capacity.

6. Deny, upon information and belief, the allegations contained in paragraph "6" of the Complaint.

7. Deny, that defendants have any knowledge or information thereof sufficient to form a belief as to the allegations contained in paragraph "7" of the Complaint.

8. Deny, upon information and belief, the allegations contained in paragraph "8" of the Complaint.

IV.FACTS

9. Deny the allegations contained in paragraph "9" of the Complaint, except admit so far as the plaintiff was at a toll booth on the Throgs Neck Bridge in Bronx, New York.

10. Deny upon information and belief, the allegations contained in paragraph "10" of the complaint, except admit that CHIAIA requested that McKAY "hand up" his cell phone.

11. Deny, upon information and belief, the allegations contained in paragraph numbered "11" except admit that CHIAIA requested that McKAY produce his driver's license and registration and McKAY declined to do so.

12. Deny, upon information and belief, the allegations contained in paragraph "12."

13. Deny, upon information and belief the allegation contained in paragraph "13," except admit that plaintiff was formally arrested approximately on April 23-24, 2005.

14. Deny any knowledge or information sufficient to form a belief as to the allegations contained in paragraph "14."

15. Deny any knowledge or information sufficient to form a belief as to the allegations contained in paragraph "15."

16. Deny upon information and belief, the allegations contained in paragraph "16" of the Complaint.

17. Deny any knowledge or information sufficient to form a belief as to the allegations contained in paragraph "17" of the Complaint.

18. Deny any knowledge or information sufficient to form a belief as to allegations contained in paragraph "18" of the Complaint.

19. Deny, upon information and belief, the allegations contained in paragraph "19" of the Complaint.

20. Deny, upon information and belief, the allegations contained in paragraph "20" of the Complaint.

21. Deny, upon information and belief, the allegations contained in paragraph "21" of the Complaint.

V. First Cause of Action
Pursuant to §1983 (False Arrest)

22. In response to the allegations set forth in paragraph "22" of the Complaint, defendants TBTA and MICHAEL CHIAIA, repeat and reiterate the responses set forth in paragraphs "1-21," inclusive of this answer, as if fully set forth herein.

23. Deny each and every allegation contained in paragraph of the complaint number "23" of the complaint.

24. Deny each and every allegation contained in paragraph of the complaint number "24" of the complaint.

25. Deny each and every allegation contained in paragraph of the complaint number "25" of the complaint.

26. Deny each and every allegation contained in paragraph of the complaint number "26" of the complaint.

27. Deny each and every allegation contained in paragraph of the complaint number "27" of the complaint.

28. Deny each and every allegation contained in paragraph of the complaint number "28" of the complaint.

29. Deny each and every allegation contained in paragraph of the complaint number "29" of the complaint.

VI. SECOND CAUSE OF ACTION
Pursuant to §1983 (EXCESSIVE FORCE)

30. In response to the allegations set forth in paragraph "30" of the Complaint, Defendants TBTA and Officer MICHAEL CHIAIA, repeat and reiterate the responses set forth in paragraphs "1-29" inclusive of this answer, as if sully set forth herein.

31. Deny each and every allegation contained in paragraph of the complaint number "31" of the complaint.

32. Deny each and every allegation contained in paragraph of the complaint number "32" of the complaint.

33. Deny each and every allegation contained in paragraph of the complaint number "33" of the complaint.

34. Deny each and every allegation contained in paragraph of the complaint number "34" of the complaint.

35. Deny each and every allegation contained in paragraph of the complaint number "35" of the complaint.

36. Deny each and every allegation contained in paragraph of the complaint number "36" of the complaint.

37. Deny each and every allegation contained in paragraph of the complaint number "37" of the complaint.

38. Deny each and every allegation contained in paragraph of the complaint number "38" of the complaint.

39. Deny each and every allegation contained in paragraph of the complaint number "39" of the complaint.

40. Deny each and every allegation contained in paragraph of the complaint number "40" of the complaint.

41. Deny each and every allegation contained in paragraph of the complaint number "41" of the complaint.

42. Deny each and every allegation contained in paragraph of the complaint number "42" of the complaint.

43. Deny each and every allegation contained in paragraph of the complaint number "43" of the complaint.

44. Deny each and every allegation contained in paragraph of the complaint number "44" of the complaint.

45. Deny each and every allegation contained in paragraph of the complaint number "45" of the complaint.

VII. THIRD CAUSE OF ACTION
Pursuant to §1983 (Malicious Prosecution)

46. In response to the allegations set forth in paragraph 46 of the Complaint, defendants TBTA and Officer MICHAEL CHIAIA repeat and reiterate the responses set forth in paragraphs "1-45," inclusive of this answer, as if fully set forth herein.

47. Deny each and every allegation contained in paragraph of the complaint number "47" of the complaint.

48. Deny each and every allegation contained in paragraph of the complaint number "48" of the Complaint.

49. Deny each and every allegation contained in paragraph of the complaint number "49" of the Complaint.

50. Deny each and every allegation contained in paragraph of the complaint number "50" of the Complaint.

51. Deny each and every allegation contained in paragraph of the complaint number "51" of the Complaint.

52. Deny each and every allegation contained in paragraph of the complaint number "52" of the Complaint.

53. Deny each and every allegation contained in paragraph of the complaint number "53" of the complaint.

54. Deny each and every allegation contained in paragraph of the complaint number "54" of the complaint.

55. Deny each and every allegation contained in paragraph of the complaint number "55" of the complaint.

VII: FOURTH CAUSE OF ACTION
Pursuant to U.S. Const. Amend. 1,
N.Y. State Const. Art. 1, §2

56. In response to the allegations set forth in paragraph "56" of the complaint, defendants TBTA and Officer MICHAEL CHIAIA repeat and reiterate the responses set forth in paragraphs "1-55," inclusive of this answer, as if fully set forth herein.

57. Deny, upon information and belief, the allegations contained in paragraph "57" of the complaint.

58. Deny each and every allegation contained in paragraph of the complaint number "58" of the complaint.

59. Deny, upon information and belief, the allegations contained in paragraph "59" of the complaint.

60. Deny each and every allegation contained in paragraph of the complaint number "60" of the complaint.

**FOR A FIRST SEPARATE AND DISTINCT
AFFIRMATIVE DEFENSE TO THE ALLEGED CAUSE(S) OF
ACTION OF THE PLAINTIFF(S), DEFENDANTS TBTA
AND MICHAEL CHIAIA ALLEGES, PON INFORMATION AND BELIEF:**

61. That whatever injuries the plaintiff alleges to have sustained at the time and place of the occurrence mentioned in the complaint, were caused, in whole or part, by the culpable conduct including, but not limited to, assumption of risk, if applicable, of the said plaintiff. Said conduct having contributed thereto of the said plaintiff, said culpable conduct having contributed thereto.

62. The amount of damages recovered if any, should therefore be diminished in the proportion which the said culpable conduct including, but not limited to assumption of risk, if applicable is attributable to the plaintiff whom bears to the culpable conduct that caused the said damages.

**FOR A SECOND SEPARATE AND DISTINCT
AFFIRMATIVE DEFENSE TO THE ALLEGED CAUSE(S)
OF ACTION OF PLAINTIFF, DEFENDANTS TBTA
AND MICHAEL CHIAIA, ALLEGES, UPON
INFORMATION AND BELIEF:**

63. Plaintiff's claim for punitive damages against defendant TBTA and must be dismissed as said defendant TBTA is a governmental entity and, as such is not liable for punitive damages.

**FOR A THIRD SEPARATE AND DISTINCT
AFFIRMATIVE DEFENSE TO THE ALLEGED
CAUSES(S) OF ACTION OF PLAINTIFF,
DEFENDANTS TBTA AND MICHAEL CHIAIA
ALLEGE UPON INFORMATION AND BELIEF:**

64. Plaintiff's complaint fails in whole or in part to state a claim upon which relief may be granted.

**FOR A FOURTH SEPARATE AND DISTINCT
AFFIRMATIVE DEFENSE TO THE ALLEGED
CAUSE(S) OF ACTION OF PLAINTIFF,
DEFENDANTS TBTA AND MICHAEL CHIAIA,
ALLEGE, UPON INFORMATION AND BELIEF:**

65. This Court lacks jurisdiction of Plaintiff's pendent state claims.

**FOR A FIFTH SEPARATE AND DISTINCT
AFFIRMATIVE DEFENSE TO THE ALLEGED
CAUSE(S) OF ACTION OF PLAINTIFF,
DEFENDANTS TBTA AND MICHAEL CHIAIA,
ALLEGE, UPON INFORMATION AND BELIEF:**

66. At all times relevant to the acts alleged in the complaint, the duties and functions of defendant TBTA employees, including MICHAEL CHIAIA, entailed the reasonable exercise of proper and lawful discretion. Therefore, defendant TBTA and MICHAEL CHIAIA are entitled to governmental, federal, common law and/or statutory immunity from liability.

**FOR A SIXTH SEPARATE AND DISTINCT
AFFIRMATIVE DEFENSE TO THE ALLEGED
CAUSE(S) OF ACTION OF PLAINTIFF,
DEFENDANTS TBTA AND MICHAEL CHIAIA,
ALLEGE, UPON INFORMATION AND BELIEF:**

67. TBTA and its employees have not violated any rights, privileges, or immunities secured by plaintiff under the Constitution or laws of the United States or the state of New York, or any political subdivision thereof, nor has any defendant violated any act of Congress providing for the protection of civil rights.

**FOR A SEVENTH SEPARATE AND DISTINCT
AFFIRMATIVE DEFENSE TO THE ALLEGED
CAUSE(S) OF ACTION OF PLAINTIFF,
DEFENDANTS TBTA AND MICHAEL CHIAIA,
ALLEGE, UPON INFORMATION AND BELIEF:**

68. There was probable cause for plaintiff's arrest.

**FOR AN EIGHTH SEPARATE AND DISTINCT
AFFIRMATIVE DEFENSE TO THE ALLEGED
CAUSE(S) OF ACTION OF PLAINTIFF,
DEFENDANTS TBTA AND MICHAEL CHIAIA,
ALLEGE, UPON INFORMATION AND BELIEF:**

69. At all times relevant to the acts alleged in the complaint, the conduct of the defendants was reasonable, proper lawful constitutional in good faith and without malice.

**FOR A NINTH SEPARATE AND DISTINCT
AFFIRMATIVE DEFENSE TO THE ALLEGED
CAUSE(S) OF ACTION OF PLAINTIFF,
DEFENDANTS TBTA AND MICHAEL CHIAIA,
ALLEGE, UPON INFORMATION AND BELIEF:**


70. Defendants assert the limitations of Article 16 of the CPLR as to all claims asserted in this supplemental complaint which are determined by this Court to be subject to the limitations of said statute.

**FOR A TENTH SEPARATE AND DISTINCT
AFFIRMATIVE DEFENSE TO THE ALLEGED
CAUSE(S) OF ACTION OF PLAINTIFF,
DEFENDANTS TBTA AND MICHAEL CHIAIA,
ALLEGE, UPON INFORMATION AND BELIEF:**

71. Some or all of plaintiff's claims are barred by the doctrines of res judicata and/or collateral estoppel.

WHEREFORE, defendants TBTA and MICHAEL CHIAIA, demand judgment dismissing the Complaint of the plaintiff with costs.

Dated New York, New York
June 30, 2006


Suzanne M. Halbardier (SMH-0310)
BARRY MCTIERNAN & MOORE
Attorneys for TBTA and Michael Chiaia
2 Rector Street -14th Floor
New York, New York 10006